

**REMARKS**

Entry of the foregoing and reconsideration of the application identified in caption as amended, pursuant to and consistent with the Rules of Practice in Patent Cases, and in light of the remarks which follow, is respectfully requested.

By the present amendment claims 1 and 10 have been amended so that claims 1-7, 9-11 and 14 will be pending upon entry of the present amendment.

Claims 1-7, 9-11 and 14, stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,064,877 to Nass et al. ("Nass"). This rejection is respectfully traversed.

Nass discloses a process for the preparation of an organic polymer matrix in which an inorganic poly-condensate structure is anchored (column 8, lines 43 to 47). These polymers are prepared by reacting a compound of Formula (I)  $MR_n$  with an organic compound A followed by polymerization or polycondensation of the reaction product in the presence of water (column 1, line 66 to column 2, line 19). M is a metal and R is a radical which can be replaced by a complexing agent (column 2, lines 1 to 7). The reaction is said to proceed in two steps, firstly, compound A replaces one or more of radicals R. Secondly, water is added to replace all remaining R residues by hydroxyl groups, which are then subjected to a condensation reaction (column 6, line 58 to column 7, line 27).

Claim 1 has been amended to include the addition of a filler material. This amendment is based at least on claim 10 as originally filed and the text appearing at page 28, third paragraph of the specification.

Nass does not disclose or suggest the addition of a filler material to the inorganic polycondensate and organic compound A disclosed therein. To the contrary, it is evident from the teachings of the prior art section of Nass that conventional fillers are regarded to be disadvantageous (column 1, lines 10 to 56). Thus, for at least this reason, amended claim 1 is novel over the disclosure of Nass.

It is also believed that Nass does not render obvious the subject matter of newly amended claim 1. It is an object of Nass to avoid the disadvantages associated with conventional filling materials. This object is achieved by forming inorganic polycondensation products which have the form of a three-dimensional network or of metal oxide fibers (column 7, lines 10 to 31) and which are anchored in the organic polymer matrix (column 8, lines 43 to 47). Thus, Nass teaches away from the use of conventional filling

materials. Furthermore, Nass is concerned with polycondensation products containing an indefinite number of metal atoms. Thus, Nass also teaches away from the use of clusters having 30 metal atoms or less.

Accordingly, claims 1-7, 9-11 and 14 are not anticipated or obvious over the teachings of Nass for at least the reasons noted above. Withdrawal of the record rejection and allowance of the pending claims is respectfully requested.

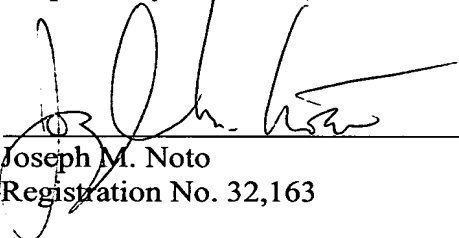
Claims 1-7, 9-11 and 14, stand rejected under 35 U.S.C. § 102(e) as being anticipated by the article by Schubert et al. This rejection is respectfully traversed.

The article by Schubert et al. is not prior art under 35 U.S.C. § 102(e). 35 U.S.C. § 102(e) is restricted to prior art in the form of a patent or published patent application. Moreover, we have been informed by the applicant that this article was published on July 7, 2001, i.e., after the foreign priority date of the present application (January 19, 2001).

Accordingly, claims 1-7, 9-11 and 14 are not anticipated by or obvious over the teachings of Schubert et al. for at least the reasons noted above. Withdrawal of the record rejection and allowance of the pending claims is respectfully requested.

In view of all of the foregoing, applicant submits that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

  
\_\_\_\_\_  
Joseph M. Noto  
Registration No. 32,163

Date: February 13, 2006

NIXON PEABODY LLP  
Clinton Square, P.O. Box 31051  
Rochester, New York 14603-1051  
Telephone: (585) 263-1601  
Facsimile: (585) 263-1600

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR  
§ 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450

February 13, 2006

Date



Ruth R. Smith